

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0093 OF 2017

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **ONZIMA GABRIEL** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

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This case came up on 4th April, 2018 in a special session for plea bargaining. The accused was indicted with the offence of Murder c/s 188 and 189 of the *Penal Code Act*. It was alleged that on 18th March, 2017 at Agoraku village in Yumbe District, the accused murdered Anguparu Jesca.

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When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then invited the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Onencan Ronald. The court then went ahead to ascertain that the accused had full understanding of what a guilty plea means and its consequences, the voluntariness of the accused’s consent to the bargain and appreciation of its implication in terms of waiver of the constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there was a factual basis for the plea, and having made the finding that the accused made a knowing, voluntary, and intelligent plea bargain, and after he had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record.

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The accused was then allowed to take plea whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; the accused and the deceased were husband and wife living together and had three children. On 18th March, 2017, the accused returned home at around

9.00 pm and did not find the wife at home. The deceased returned home at around 10.00 pm and she was drunk. The accused began quarrelling with her and the quarrel was followed by beating her using a pounding stick, indiscriminately including the head. She collapsed and the accused dragged her outside to a nearby hut in the compound. She sustained serious injuries and never
5 woke up again. She was discovered dead the following day on the same spot. People gathered and the matter was reported to the police. The accused was arrested and police officers went to the scene, took photographs of the deceased and also carried the body to Yumbe Hospital. The request was made by the CID of Yumbe requesting examination of the body of Anguparu Jessica and it was done at Yumbe Hospital Mortuary. Externally, the back of the head had bruises with a
10 lacerated wound and depression on the left hand side. There were multiple bruises on the right side. Internally, there was trauma to the brain tissue. The occipital bone was fractured and the cause of death was intracranial haemorrhage and damage to vital centres in the brain. The examination was done by Dr. Saffi of Yumbe Hospital on 19th March, 2017. The accused was examined and was found to be about 44 years and he was mentally normal. This was done on
15 20th March, 2017. The respective medical examination reports too were admitted as part of the facts.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his own plea of guilty for the offence of Murder c/s 188 and 189 of the *Penal Code Act*. In
20 justification of the sentence of twelve (12) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement, which are that; the offence is punishable by death, the deceased left orphans and was killed simply for having returned home drunk after her husband, the convict. Learned defence counsel too adopted the mitigating factors outlined in the plea agreement, which briefly are that; the accused is a first
25 offender at the age of 42 years who has readily pleaded guilty. He is remorseful and apologised to the family of the deceased. In his *allocutus*, the convict stated that the deceased was his wife. He did not intend to kill her. He was teaching her how they should live at home. He harmed her because she drinks alcohol. He advised her not to drink like that. She abused him and he got annoyed and grabbed a club. He abused his private part and he felt so low as a man. She annoyed
30 him by coming back home late. They have five children. The elder one is in school and the younger ones have not gone to school yet.

I have reviewed the proposed sentence of twelve years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Bukenya v. Uganda C.A Crim. Appeal No. 51 of 2007*, where in its judgment of 22nd December 2014, the Court of Appeal upheld a sentence of life imprisonment for a 36 year old man convicted of murder. He had used a knife and a spear to stab the deceased, who was his brother, to death after an earlier fight. In *Sebuliba Siraji v. Uganda C.A. Cr. Appeal No. 319 of 2009*, in its decision of 18th December 2014, the court of appeal confirmed a sentence of life imprisonment. In that case, the victim was a businessman and the accused was his casual labourer. On the fateful day, the accused waited for the deceased with a panga hidden in a kavera (polythene bag) and when the deceased opened his vehicle, the appellant attacked him and cut him with a panga on his head, neck and hand. In *Uganda v. Businge Kugonza H.C. Cr. Sess. Case No. 162 of 2012* the accused was convicted of murder after a full trial and was on 11th September 2013 sentenced to 20 years' imprisonment. The convict in that case had dug hole in the wall of the victim's house and cut him to death with a panga while he slept in his bed. In *Uganda v. Ocitti Alex and another, H.C. Cr Sessions Case No. 0428 of 2014*, an accused who plead guilty to an indictment of murder was on 7th November 2014 sentenced to 25 years' imprisonment. The 43 year old accused hit the deceased with an axe at the back of his head multiple times. In *Uganda v. Mutebi Muhamed and another, H.C. Cr Sessions Case No. 038 of 2011*, one of the accused who pleaded guilty to the offence of murder was on 17th January 2014 sentenced to 25 years' imprisonment while the other convicted after a full trial was sentenced to 30 years' imprisonment. The two convicts had killed the deceased by stabbing repeatedly on vulnerable parts of the body such as the head, the chest and near the breast during a robbery. Lastly, the case of *Tom Sazi Sande alias Hussein Saddam v. Uganda C.A Cr Appeal No. 127 of 2009*, where in its decision of 24th March 2014, the Court of Appeal upheld a sentence of 18 years' imprisonment for an accused who pleaded guilty to an indictment of murder. He had been on remand for 2 years and 3 months.

Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, and the fact that the convict has already spent one year on remand, I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the

State Attorney and in accordance thereto, sentence the accused to a term of imprisonment of twelve (12) years, to be served starting today.

5 Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Arua this 4th day of April, 2018

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Stephen Mubiru
Judge,
4th April, 2018.